

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18011337  
)  
**EDDIE A. VILLARREAL AND** ) Date Issued: August 7, 2018  
**MAGDELENA M. VILLARREAL** )  
)  
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**OPINION**

Representing the Parties:

For Appellant: Eddie A. and Magdalena M. Villarreal

For Respondent: Rachel Abston, Senior Legal Analyst

For Office of Tax Appeals: Lisa Burke, Business Tax Specialist III

M. GEARY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,<sup>1</sup> Eddie A. Villarreal and Magdalena M. Villarreal (appellants) appeal the action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,755,<sup>2</sup> plus applicable interest, for the 2011 tax year.

Appellants waived their right to an oral hearing. We decide the matter based on the written record.

**ISSUE**

Whether appellants have shown error in FTB’s proposed assessment, which is based on a federal determination?

<sup>1</sup> Unless otherwise indicated, all statutory (“section” or “§”) references are to the Revenue and Taxation Code).

<sup>2</sup> FTB initially assessed additional tax of \$10,132, but it has since agreed to reduce the proposed additional tax to \$4,755.

## FACTUAL FINDINGS

1. On their joint 2011 California personal income tax return, appellants reported taxable income of \$104,314 and tax of \$4,997. After subtracting exemption credits of \$1,464 and an “other state tax” credit of \$2,314, appellants reported a total tax liability of \$1,219. Appellants then applied their withholding credit of \$4,727 and reported an overpayment of \$3,508, which FTB allowed.<sup>3</sup>
2. FTB received Internal Revenue Service (IRS) audit information showing adjustments to appellants’ federal return for the same tax year. The federal adjustments disallowed a \$12,755 deduction for a penalty allegedly resulting from an early withdrawal of savings and further increased appellants’ income for unreported wages of \$1,427 and unreported interest income of \$125.<sup>4</sup> The transcript also showed that the federal assessment was final and that appellants had been making payments against the federal deficiency pursuant to an installment payment agreement.
3. FTB applied the federal adjustments to appellants’ California return and, on June 10, 2015, issued a Notice of Proposed Assessment (NPA) of additional tax of \$10,132, plus interest.
4. By letter dated August 8, 2015, appellants protested the NPA. FTB issued a position letter to appellants on May 16, 2016. Appellants did not reply.
5. On July 18, 2016, the FTB issued a Notice of Action (NOA) affirming the NPA in its entirety. By letter received August 9, 2016, appellants filed this timely appeal.
6. By letter dated June 23, 2017, FTB conceded that the proposed assessment was overstated in the amount of \$5,377 in tax, representing a concession of the only issue that appellants raised in their opening brief. FTB’s concession reduces the proposed assessment to \$4,755 in tax, plus accrued interest.
7. On March 7, 2018, the Office of Tax Appeals sent appellants a letter asking whether they disagree with the reduced assessment. Appellants did not reply.

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<sup>3</sup> FTB applied \$782.10 to a balance due for tax year 2008 and issued a refund for the remaining \$2,725 on April 19, 2012.

<sup>4</sup> The federal adjustments also included unreported pension/annuity distributions of \$74,593 and a 10-percent premature distribution tax of \$7,459. FTB initially included the unreported pension/annuity distributions and a 2.5 percent premature distribution tax, but FTB now concedes this issue.

DISCUSSION

Have appellants shown error in the revised proposed assessment of additional tax of \$4,755 for the 2011 tax year?

Section 18622 requires a taxpayer to concede the accuracy of changes or corrections to its federal tax return by the IRS or to state where the changes are erroneous. (§ 18622.) It is well settled that a deficiency assessment based on federal adjustments to income is presumed correct and the taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986.)<sup>5</sup>

Here, appellants did not dispute the adjustments to their 2011 federal tax return. Instead, they entered into an installment payment agreement with the IRS, and the federal assessment is final. While appellants argue that FTB's assessment of tax on unreported pension/annuity distributions of \$74,593 was incorrect because they received those distributions while residents of Colorado, that tax is no longer at issue, and they have not made any argument or provided any evidence concerning the adjustments for the disallowed \$12,755 deduction or the unreported wages and interest income. Having failed to carry their burden of proving an error by FTB, the presumption in favor of the FTB's determination prevails.

HOLDING

Appellants have not shown error in the revised proposed assessment of additional tax of \$4,755, plus interest, for the 2011 tax year.

DISPOSITION

FTB's denial of appellant's appeal is reversed to the extent of FTB's concession regarding tax of \$5,377, plus interest, but is otherwise sustained regarding the reduced assessment of \$4,755 tax, plus interest.

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Michael F. Geary  
Administrative Law Judge

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<sup>5</sup> Board of Equalization opinions may be viewed on-line at <http://www.boe.ca.gov/legal/legalopcont.htm>.

We concur:

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Teresa A. Stanley  
Administrative Law Judge

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Andrew J. Kwee  
Administrative Law Judge